employees; that the danger of the coal falling was known to him; and that a test as to its safety could have been made by tapping with a pick. An experienced miner testified that when the coal bulged, it was the duty of the undercutter to report the fact to the foreman and to stay out of danger until the vein was properly faced. Held to show an assumption of risk, precluding recovery.

RICHARDSON *v.* PIERCE et al.

June 28, 1906.

[54 S. E. 480.]

Fraudulent Conveyances—Remedies of Creditors—Burden of Proof—Subsequent Creditor.—Where, in an action by subsequent creditors to set aside a deed to a wife as in violation of Code 1904, § 2458, prohibiting any conveyances with an intent to hinder or defraud creditors, it appears that, though the deed may have been procured by the husband's money and credit, yet the husband was not indebted at the time of the transaction, it must be further shown by the plaintiff that the transaction was in anticipation of future indebtedness and to defraud future creditors.

[Ed. Note.—For cases in point, see vol. 24, Cent. Dig. Fraudulent Conveyances, § 806.]

McMURRAY et al. *v.* DIXON.

June 28, 1906.

[54 S. E. 481.]

1. Actions—Survival—Joinder of Parties.—Where an action of ejectment was brought in the name of a husband and wife and the husband died, the cause of action survived to the wife, as provided by Code 1904, § 3306.

[Ed. Note.—For cases in point, see vol. 1, Cent. Dig. Abatement and Revival, § 318; vol. 17, Cent. Dig. Ejectment, § 118.]

2. Limitation of Actions—Disability of Party—Ejectment—Statute Applicable.—Where plaintiff purchased certain land in controversy while under coverture in 1874, and took actual possession under her title papers and continued under coverture until after suit brought in ejectment, her right could only be barred by limitations under Code 1904, § 2981, providing that, where the person is under disability when a cause of action arises, no action shall be brought to recover land but within 20 years next after the time at which such right shall have accrued.

3. Same—Recovery of Land—Possession—Burden of Proof.—A party ousted from possession of land may recover the premises in ejectment on his possession merely, unless the defendant who entered and ousted plaintiff has title himself or authority to enter under the title.

[Ed. Note.—For cases in this point, see vol. 17, Cent. Dig. Ejectment, §§ 16-21, 30-41.]

4. Same—Burden of Proof.—In ejectment by one who has been ousted from possession, the burden is on defendant to show that he is the true owner, or has authority to enter.

[Ed. Note.—For cases in this point, see vol. 17, Cent. Dig. Ejectment, §§ 240, 245.]

5. Appeal—Married Women—Equitable Estates—Instructions—Harmless Error.—Where, in ejectment, the evidence established that plaintiff, a married woman, purchased the property in 1874, prior to the passage of Act April 4, 1877 (Acts 1876-77, p. 333, c. 329), securing to married women a statutory separate estate, and therefore she could not have acquired an equitable separate estate in the land, an instruction that, if plaintiff purchased the land prior to 1878, it was her common-law separate estate, and, if defendants ousted her from a part of the land, plaintiff's right of action was not barred until the expiration of 20 years from the date of defendants' entry, if plaintiff's coverture continued for the period of 20 years after such entry, was not prejudicial to defendants, though erroneous in fixing the time of the purchase.

6. Estoppel—In Pais—Claim to Land.—Plaintiff could not be estopped to set up a claim to certain land because of her statement to defendants' grantors that she did not claim the same, since a disclaimer of a freehold can only be made by deed or in a court of record.

[Ed. Note.—For cases in point, see vol. 19, Cent. Dig. Estoppel, § 293.]

7. Boundaries—Parol Agreement—Effect.—In ejectment, a requested charge that if plaintiff did not claim the land in controversy beyond her fence, and so stated to defendants' grantors, the jury should find for defendants, was properly refused, since a mere parol agreement to establish a boundary, and thus exclude land embraced in a deed from its operation, could not affect the rights of the parties growing out of the deed.

[Ed. Note.—For cases in point, see vol. 8, Cent. Dig. Boundaries, § 216.]

8. Same—Evidence.—In ejectment, evidence reviewed, and held to sustain a verdict for plaintiff.

SHERRARD et al. *v.* WESTERN STATE HOSPITAL.

Sept. 24, 1906.

[54 S. E. 1001.]

Wills—Trust Devise—Construction.—Where testator's will gave a fund to a trustee, to keep it invested and use the income for the support of a son of testator during his life, on the death of the beneficiary, the fund to be distributed under the residuary clause of the will, the beneficiary took a mere life estate, and after his death the fund could not be kept invested to produce income to pay debts contracted in his maintenance.